

I just want to say to my fellow colleagues that it is not correct that Chairman HATCH is acting unfairly. Chairman HATCH has acted with principle in this matter. He brought Clinton nominees to the floor, and he moved them forward, even when some of us objected. Even when Senator HATCH himself may have objected on the merits, those nominees got votes.

Take, for example, the Richard Paez nomination, which I opposed. Several people had holds on that nomination. Some wanted to see if we could work with President Clinton to get some more mainstream nominees for the Ninth Circuit Court of Appeals. We were hoping to negotiate with him on that, as we tried to do with other things. Finally, the Republican Majority Leader, TRENT LOTT, said: It is time for this man to have an up-and-down vote. File for cloture. He filed for cloture, and I supported cloture. ORRIN HATCH supported cloture. TRENT LOTT supported cloture. When Paez was voted on, I am pretty confident that TRENT LOTT voted against him, just as I voted against him. Several dozen votes were cast against him.

I note parenthetically that now-Judge Paez was part of a panel of the Ninth Circuit that overturned the "three strikes" law in California. That panel was overruled by the U.S. Supreme Court earlier this year. Judge Paez was also part of the panel that declared the Pledge of Allegiance unconstitutional because it had the words "under God" in it.

Notwithstanding indications of such judicial activism during his confirmation hearing and process, Judge Paez was confirmed. He got his up-or-down vote. The Republican leadership moved the nomination forward.

That is all we are asking of the Democratic leader, TOM DASCHLE, with

respect to Miguel Estrada and Priscilla Owen. Instead, it looks like we may be heading toward more filibusters. I certainly hope not.

Of the many reasons why we shouldn't have a filibuster, an important one is the Article I of the Constitution. It says the Senate shall advise and consent on treaties by a two-thirds vote, and simply "shall advise and consent" on nominations.

Historically, we have understood that provision to mean—and I think there is no doubt the Founders understood that to mean—that a treaty confirmation requires a two-thirds vote, but confirmation of a judicial nomination requires only a simple majority vote. That is why we have never had a filibuster. People on both sides of the aisle have understood it to be wrong. They have understood it to be in violation of the Constitution.

As Senator HATCH has said, the complaint suggesting there was a filibuster on the Fortas nomination is not really correct. They had debate for several days. Apparently, when the votes were counted, it was clear that considering those who were absent, there were enough votes to defeat the nomination, and the nomination was withdrawn.

So there has never really been a filibuster of a judicial nominee in the Senate until now, when our Democratic colleagues have decided to change the ground rules on confirmation. They have said so and done so openly, and seem to be little concerned that the Constitution may be violated in the process.

Mr. President, these nominees are entitled to an up-and-down vote. If a Member does not like them, he or she can vote against them. But it is time to move these nominees. How can they defend voting against nominees of the

quality of Priscilla Owen or Miguel Estrada? How can they justify opposing a man of such integrity, ability, patriotism, and courage as Attorney General Bill Pryor, a man of faith and integrity? These are questions that should be answered on the floor. Let us discuss these nominees' records here. And then, let us just vote. That is what the Constitution and Senate tradition demand of us.

I think the American people are getting engaged, and they are telling us "we are tired of obstructionism," "we are tired of delays," and "we believe these nominees deserve an up-and-down vote." I could not agree more.

I yield the floor.

RECESS UNTIL MONDAY, JULY 28,
2003, AT 11 A.M.

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until 11 a.m. on Monday.

Thereupon, the Senate, at 3:35 p.m., recessed until Monday, July 28, 2003, at 11 a.m.

NOMINATIONS

Executive nominations received by the Senate July 25, 2003:

THE JUDICIARY

JANICE R. BROWN, OF CALIFORNIA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE DISTRICT OF COLUMBIA CIRCUIT, VICE STEPHEN F. WILLIAMS, RETIRED.

BRETT M. KAVANAUGH, OF MARYLAND, TO BE UNITED STATES CIRCUIT JUDGE FOR THE DISTRICT OF COLUMBIA CIRCUIT, VICE LAURENCE H. SILBERMAN, RETIRED.

NUCLEAR REGULATORY COMMISSION

JOHN JOSEPH GROSSENBACHER, OF ILLINOIS, TO BE A MEMBER OF THE NUCLEAR REGULATORY COMMISSION FOR THE REMAINDER OF THE TERM EXPIRING JUNE 30, 2004, VICE RICHARD A. MESERVE, RESIGNED.

JOHN JOSEPH GROSSENBACHER, OF ILLINOIS, TO BE A MEMBER OF THE NUCLEAR REGULATORY COMMISSION FOR A TERM EXPIRING JUNE 30, 2009. (REAPPOINTMENT)